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became clear that the administration would not cooperate and that some of our colleagues were unwilling to sit down and try to develop a true consensus, was I persuaded that there was no choice but to act as I have. And again, I tell my colleagues that this action is consistent with the law and consistent with our desire to retain a presence in the Gulf in order to protect our national interests and international law.

Having said all that, Mr. President, let me say a few words about the policy I am proposing in this Resolution. Again, I emphasize the fact that the Resolution authorizes our continued deployment in the Gulf. If passed as introduced, not a single ship, not a single sailor, not a single aviator or plane would be removed. What would change would be this: the escorting of the reflagged Kuwaiti vessels would terminate in six months.

Now let me explain why I have objected to this element of our policy in the Gulf.

To begin with, I find the reflagging policy both unjustified and provocative. I think we all know why the policy developed: in the wake of the Iran-Contra affair, there was a need to assert our role in the region again. The government of Kuwait is confronting Iran but it also shares the objective of keeping the Gulf open for the free flow of oil. Senator Nunn in commenting on this administration policy stated "the only plausible reason for protecting the Kuwaiti tankers and, thereby, encouraging further ship attacks by Iraq is the possibility that these events would influence the Iranians to end the ground war . . . . But the Administration has produced no witnesses and no evidence that there will be any effect on the ground war. Thus, the United States proposes to play an expanded military role which is counter to one objective (ending the 'tanker war') and which will not be effective in attaining the second (ending the ground war)."

Now, I want to be clear that those were arguments which Senator Nunn made in opposing the initiation of the reflagging policy. He may believe that once we started reflagging, there are reasons to continue it no matter how absurd its initial justification was. He will have to address that issue himself. My point is that the initial policy made no sense. And, as it has developed, it still does not make sense.

Has the tanker war been slowed? The answer is no. In fact, in many respects, the frequency of the attacks and the nature of the threat has expanded. Has the ground war been slowed? Again the answer is no. Indeed, despite our intervention and involvement, the staff of the Foreign Relations Committee after visiting the region, concluded that the possibility of an Iranian victory was very real.

And there are other signs, unrelated to the original purposes of the policy, which suggest that reflagging has failed. Just last week, Kuwait announced that one of its tankers—the largest tanker—would no longer travel through the Gulf. Even with US protection, Kuwait did not feel that the ship was safe. So I am not at all sure that we have demonstrated, in light of all the events which have taken place, that we can achieve even a tactical purpose by protecting reflagged Kuwaiti vessels in the Gulf.

The point, Mr. President, is simple: reflagging was a bad policy in the beginning and it hasn't gotten any better. We ought to terminate it. But we ought to terminate it in a way which does not give comfort to Iran or give Iraq cause for concern; we ought to terminate it in a way which retains our role in the Gulf; and we ought to terminate it in a way which makes the continuing nature of

our commitment clear. This Resolution, I believe, does that.

The Resolution combines the termination of reflagging with an authorization for continued deployment of forces in the region. Our commitment is not called into question—indeed, it is reaffirmed. In fact, only a failure to adopt a Resolution like the one I have introduced can cast doubt on our willingness to protect our interests in the Gulf.

Beyond that, my Resolution does not terminate the escorting of the reflagged vessels over night. I recognize that having started this policy, we need to find a way to back out of it rather than just end it. We need to de-escalate, not withdraw; slow down, not walk away. The six month sunset provision included in this Resolution allows us to do that. Some may want to change the time frame—make it either longer or shorter—but I think six month represents a reasonable compromise, a reasonable middle ground between a pull out and indefinite commitment to a policy that does not make sense.

Let me conclude this statement by emphasizing just a few points. First, under the law, we must act on this Resolution or face the consequences. Second, this Resolution is not "cut and run"—it authorizes continued deployment of US Forces. Third, this Resolution is fully amendable and if people have concerns about the policy it contains, then they ought to offer their amendments and let the Senate make a judgment; I am prepared to do that and I welcome suggestions to improve the Resolution and debate about its elements. Finally, I want to say to my colleagues that there is nothing tricky or secretive in the strategy I have followed to bring this Resolution before the body. I have done what the law and the Senate Rules allow me to do; I have done what my conscience requires me to do; now I simply hope that the Senate and the House will do what the law, and our national interests, require.

Mr. ADAMS. Let me conclude, Mr. President, by thanking the majority leader for his patience and for his support. We have not always agreed on the substance but I have found him to be fair and dedicated protecting my rights and those of the other Members of the Senate. He has also demonstrated, as shown many times before, an ability to craft solutions which satisfy the needs of all parties, even if they do not make all of those parties completely happy.

So, I want to express my appreciation to the majority leader for the way in which this matter has been handled. I think that we will undoubtedly revisit this issue before the 100th Congress has adjourned. I appreciate the cooperation of the Members of the minority who have worked on this, and the majority leader for what is done today.

I yield the floor, Mr. President.

Mr. BYRD. Mr. President, let me simply say that the distinguished Senator from Washington, Mr. ADAMS, did what he felt he should do and what he had to do. I respect his right to act as he did. He behaved as a Senator is supposed to behave. He followed the rule. He followed his own conscience. I believe he acted in the best traditions of the Senate. I believe his cooperation in allowing me to raise this point of order allowed us also to avoid what might potentially have been a very difficult

position. In conclusion, let me say that I agree with his conclusion that the precedent set here was a very narrow one, and I also agree with him that there is a need to improve the War Powers Resolution.

I am working on that. And I promise to work with the able Senator from Washington Mr. ADAMS, in that effort.

## ORDER OF PROCEDURE

Mr. BYRD. Mr. president, I understand that the distinguished Senator from Maine has a statement that he wishes to make. I ask unanimous consent that morning business be extended throughout the time for his making his remarks, that he may be permitted to speak therein, and that upon the conclusion of the Senator's statement and upon his yielding the floor, the Chair automatically put the Senate over until Tuesday next, at the hour of 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Maine is recognized.

## THE PRESIDENT'S STATEMENT ON SIGNING THE INTELLIGENCE AUTHORIZATION ACT

Mr. COHEN. Mr. President, I feel compelled today to share with my colleagues in the Senate my deep sense of frustration and concern over the statement made by the President on Wednesday, December 2, when he signed into law H.R. 2112, the Intelligence Authorization Act for fiscal year 1988.

As vice chairman of the Senate Select Committee on Intelligence it has been my honor and pleasure to work with President Reagan and the intelligence community officials in the effort to ensure that adequate resources are provided for our Nation's intelligence activities.

I believe the President deserves great credit for the initiatives which have been undertaken with his leadership and direction to bolster our intelligence capabilities.

One area in which President Reagan has strengthened capabilities has been of special interest to me, and that is the counterintelligence area. As my colleagues know, I have worked to reduce the espionage threat in this country by reducing the number of Soviet spies posing as diplomats, both at the United Nations, the Soviet Embassy, and consulates. Some administration officials, particularly in the State Department, strongly resisted our efforts, but I think the President has shown great courage and resolve in implementing our initiatives and reducing the number of spies in the United States.

It is thus with a sense of sadness that I must report today that the statement of the President on signing the intelligence authorization bill con-

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tains a characterization which reflects what can only be charitably viewed as bad advice. Specifically, the President said at the conclusion of his statement, and I am quoting:

Finally, I must express my view that section 501 of the bill is unconstitutional. This section would require the Attorney General to report to the Congress internal disagreements between executive officials about the admission of foreign officials to the United States. These internal disagreements reflect communications and deliberations that are protected from disclosure because of the need for candor and objectivity among executive officials. The President, of course, has the exclusive constitutional authority to "receive ambassadors and other public ministers." Since the Presidency of George Washington, it has been consistently recognized that the executive branch cannot be made to disclose to the Congress information relating to actions taken pursuant to an authority assigned by the Constitution exclusively to the President. Accordingly, requiring this annual report by the Attorney General would violate long-established constitutional principles and, pursuant to my constitutional authority, I will instruct the Attorney General not to submit an annual report to the Congress pursuant to section 501. I do not, however, believe the unconstitutionality of section 501 affects the validity of the remainder of the bill.

This is an extraordinary, and regrettable, statement. The President is saying that he does not intend to implement a law which Congress enacted and he has signed. In effect, the President is exercising a "line-item" veto over this provision of the Intelligence Authorization Act.

The Constitution and laws of the United States recognize no such power. If the President thought this provision was unconstitutional, he should have vetoed the bill, but since he did not, he is constitutionally bound to faithfully execute its provisions.

I also feel obliged to comment upon the rationale cited in the President's Statement for concluding that the provision in the bill is unconstitutional. As I read the statement, it seems to say that since the Constitution gives the President exclusive authority to "receive ambassadors and other public ministers," Congress cannot constitutionally require information of him regarding the exercise of this function. Leaving aside the question of whether Soviet nationals admitted to the United States legally qualify as "ambassadors and other public ministers," the proposition that Congress cannot, where the Constitution gives exclusive powers to the President, constitutionally ask for information concerning the exercise of such powers has extremely troubling implications for this Congress and the country. Congress cannot perform its legislative functions without information. It cannot perform oversight, nor can it appropriate funds for Government activities without information from the executive. To contend that where the Constitution gives exclusive powers to the President, he can deny Congress information regarding the exercise of such

powers, thereby precluding it from exercising its own constitutional responsibilities, seems to me to raise serious constitutional objections from this end of Pennsylvania Avenue.

As it happens, no constitutional objection was lodged against this particular provision of the Intelligence Authorization Act by the administration at any point during the legislative process, although there was ample opportunity to do so. Moreover, had such objections been raised, there were alternative methods of satisfying the requirement which would not raise the same constitutional concerns. But none of this was raised until the bill reached the President's desk for signature. The Intelligence Committee was advised of the concern when it was at the President's desk. I find this incredible and intolerable.

Unlike any of the other committees on which I am serving or have served during my time in Congress, the Intelligence Committee invites intelligence community representatives to sit in as we mark up legislation. In this light, it is all the more incomprehensible that such strong language is included in the President's signing statement at the behest of the Attorney General's Office of Legal Counsel.

Let me reiterate, the issue was never raised at any point in the process prior to the signing statement, despite repeated opportunities to do so. Prior to reporting the bill to the Senate in May, the committee provided language to the Acting Director of Central Intelligence, who represented the administration on the measure and sat in on our markup. No question was raised about this provision. After the committee reported the bill, it was circulated for comment within the executive branch. The Justice Department's Office of Legislative Affairs specifically consulted the Office of Legal Counsel. No question was raised. After the Senate passed the bill and it went to conference with the House bill, which had no similar provision, the bill was again circulated within the executive branch, specifically including the Office of Legal Counsel in the Justice Department. Again, no question was raised.

This provision is simply the latest in a series of Senate Intelligence Committee initiatives to restrict the hostile intelligence presence in this country. Prior legislation, which I cosponsored in 1985 and 1986, established the policy of substantial equivalence between the number of United States and Soviet Embassy, consulate, and U.N. mission personnel, unless waived by the President. The President implemented this legislation in October 1986, when over 80 Soviet intelligence officers were expelled.

The new reporting requirement reflects concern that the Soviets may rebuild their intelligence capabilities by replacing legitimate diplomats with KGB and GRU officers. In January 1987, press reports indicated a conflict

between the Justice and State Departments over the granting of visas to Soviet intelligence officers, with the State Department favoring a more lenient policy. Later articles quoted then FBI Director William Webster as expressing concern about this problem. The committee's initiative seeks to ensure that Congress is informed when counterintelligence concerns are overruled in the granting of such visas. Such information is necessary to assess the hostile intelligence threat and the effectiveness of U.S. counterintelligence policies.

I reiterate: At no time in the Congressional consideration of this proposal did any executive branch official express any constitutional reservation. Rather, counterintelligence experts indicated to committee staff that this narrow reporting requirement—limited only to those cases where visas are granted over FBI objections—was preferable to a requirement to report every case where a visa is granted to a Soviet intelligence officer.

So we acceded to the intelligence community's recommendation. We could have phrased it and legislated in a different fashion, but we acceded to the intelligence community's recommendation. So if there were any constitutional concerns raised at that time, it could have been revised to meet those House concerns by framing the report so as not to require information on predecisional advice to the President. Alternatively, the committee could have exercised its oversight and budget authority directly to ask the FBI for the necessary information on admission of Soviet intelligence officers.

For the Justice Department to have raised this only at the very last minute—and to have not even had the simple courtesy to contact the committee about it—is a disservice to the President, to the Intelligence Committees, to the Congress, and to the brave professionals responsible for countering the espionage threat against this Nation.

Finally, Mr. President, we simply cannot allow the proposition to stand that the President of the United States is allowed to pick and choose which provisions of legislation he has signed into law he shall faithfully execute. His choices are rather simple. He can sign a measure and faithfully execute its provisions until that law is successfully challenged or reversed by the Supreme Court, or he can veto the measure and send it back to Congress to be corrected.

What he cannot do is sign the legislation and declare certain of its provisions unconstitutional and direct executive agencies to disregard provisions of that law.

If Congress remains silent in the face of such conduct, I believe it will invite a subversion of its own constitutional role and responsibilities.

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Quoting the President's statement, he would like to retain the powers of George Washington, and we agree. What we cannot agree to is that he have the powers of George III.

I have spoken with White House officials this morning and I had to have this issue clarified by late this afternoon. That was not possible to achieve. But I am told that the President, indeed, will seek to clarify any misunderstanding that has come about as a result of the signing statement. I look forward to the President's statements next week.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ORDER FOR APPROPRIATIONS COMMITTEE TO HAVE UNTIL 6 P.M. TODAY TO FILE REPORT-ED BILLS

Mr. SARBANES. Mr. President, I ask unanimous consent that the Appropriations Committee may have until 6 p.m. this evening to file reported bills.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ORDERS FOR TUESDAY, DECEMBER 8, 1987

##### ADJOURNMENT TO 9:30 A.M.

Mr. BYRD. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9:30 a.m. on Tuesday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that no motions or resolutions over under the rule come over on Tuesday next and that the call of the calendar under rule VIII be waived on Tuesday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

##### MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order on Tuesday next, there be a period for morning business not to extend beyond 10 a.m., that Senators may speak therein for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PROGRAM

Mr. BYRD. Mr. President, I had hoped that the Senate would be able to proceed on the reconciliation bill

next Tuesday, but as of the moment some problems remain with respect to the budget deficit-cutting package. I hope that that package can be prepared legislatively and otherwise, to offer as an amendment to the reconciliation bill, at such time as it is brought up.

That bill, as we all know, will be brought up under expedited procedures. I hope that, if we cannot bring the bill up at some point on Tuesday, it will be ready to bring up on Wednesday.

I state all that to say at this point that I am not sure as to what the Senate will be doing on Tuesday next. Once the reconciliation bill and the continuing resolution are passed—and by “passed” I mean have gone to conference, returned in the form of conference reports, and have been sent to the President and signed, or we get indications from the White House that they will be signed—then the Senate and House can adjourn sine die. In the meantime, if there are other measures that can be brought up and debated and acted upon, then we will attempt to move forward on them.

Mr. President, I see my good friend, the distinguished Senator from Maine, Mr. COHEN, here, who is the acting Republican leader at this time.

Apart from the program, which I was stating, I should mention a possible Saturday session next week, if necessary, to finish work on the reconciliation bill and continuing resolution. The reconciliation bill has been sent over from the House. A continuing resolution has been sent over from the House. And, so, all Senators should read the Record carefully and note carefully that if there is a necessity for the Senate's being in session on next Saturday or the following Saturday or both, the Senate will be in session on either or both Saturdays.

They will be important Saturdays because the reason would be, as I have already indicated and implied, that of expediting action on the reconciliation measure and on the continuing resolution, both of which have to be finally enacted before the Senate can or will adjourn sine die for the year.

I would hope that all staffs will call this portion of the Record to the attention of Senators if Senators are not in a position at the moment to listen to what has just been said.

#### ADJOURNMENT UNTIL TUESDAY, DECEMBER 8, 1987, AT 9:30 A.M.

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m., Tuesday, December 8.

Thereupon, the Senate, at 4 p.m., adjourned until Tuesday, December 8, 1987, at 9:30 a.m.

#### NOMINATIONS

Executive nominations received by the Senate December 4, 1987:

#### DEPARTMENT OF THE TREASURY

MARK SULLIVAN III, OF MARYLAND, TO BE GENERAL COUNSEL FOR THE DEPARTMENT OF THE TREASURY. VICE ROBERT MICHAEL KIMMITT, RESIGNED.

#### DEPARTMENT OF THE INTERIOR

TS ARY, OF OKLAHOMA, TO BE DIRECTOR OF THE BUREAU OF MINES. VICE ROBERT CARLTON HORTON, RESIGNED.

#### FEDERAL TRADE COMMISSION

SUSAN E. PHILLIPS, OF VIRGINIA, TO BE A FEDERAL TRADE COMMISSIONER FOR THE TERM OF 1 YEARS FROM SEPTEMBER 28, 1987. VICE PATRICIA PRICE BAILEY, TERM EXPIRED.

#### NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

ALVIN H. BERSTEIN, OF RHODE ISLAND, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE HUMANITIES FOR A TERM EXPIRING JANUARY 26, 1987. VICE CHARLES RAY RITCHESON, TERM EXPIRED.

#### THE JUDICIARY

RUDY LOZANO, OF INDIANA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF INDIANA VICE MICHAEL S. KATNIK, ELEVATED.

#### DEPARTMENT OF JUSTICE

GRACE FLORES-HUGHES, OF TEXAS, TO BE DIRECTOR, COMMUNITY RELATIONS SERVICE, FOR A TERM OF 4 YEARS, VICE GILBERT G. POMPA, DECEASED.

#### DEPARTMENT OF DEFENSE

THOMAS F. FAUGHT, JR., OF PENNSYLVANIA, TO BE AN ASSISTANT SECRETARY OF THE NAVY. VICE MELVYN R. PAISELEY, RESIGNED.

#### IN THE AIR FORCE

THE FOLLOWING-NAMED INDIVIDUALS FOR APPOINTMENT AS RESERVE OF THE AIR FORCE (ANGUS) IN THE GRADE INDICATED UNDER THE PROVISIONS OF SECTIONS 593 AND 5351, TITLE 10, UNITED STATES CODE, WITH A VIEW TO DESIGNATION UNDER THE PROVISIONS OF SECTION 5067, TITLE 10, UNITED STATES CODE, TO PERFORM DUTIES AS INDICATED.

#### MEDICAL CORPS

##### To be lieutenant colonel

GERALD M. FRIEDMAN, 084-32-5560  
RONALD J. GELZUNAS, 182-22-3310  
CHARLES T. MACY, 237-47-1790  
DEAN E. SORENSON, 519-35-4173  
STEWART A. VERNOCY, JR., 074-26-5240

#### IN THE AIR FORCE

THE FOLLOWING OFFICERS FOR APPOINTMENT IN THE REGULAR AIR FORCE UNDER THE PROVISIONS OF SECTION 531, TITLE 10, UNITED STATES CODE, WITH A VIEW TO DESIGNATION UNDER THE PROVISIONS OF SECTION 5067, TITLE 10, UNITED STATES CODE, TO PERFORM DUTIES INDICATED WITH GRADE AND DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE PROVIDED THAT IN NO CASE SHALL THE FOLLOWING OFFICERS BE APPOINTED IN A GRADE HIGHER THAN THAT INDICATED.

#### MEDICAL CORPS

##### To be colonel

CARY D. HARDISON, 408-82-8515  
DONALD K. JODER, 530-40-4923

##### To be lieutenant colonel

RANJAN H. PAREKH, 158-86-5555  
HOWARD L. RITTER, JR., 268-46-7885

##### To be major

HORACE R. CARSON, 263-95-3221  
EDWARD J. MARKUSHEWSKI, 240-84-7261

##### To be captain

STEPHEN E. POPPER, 545-80-0273

#### DENTAL CORPS

##### To be lieutenant colonel

THOMAS E. BOYTIM, 160-40-5254  
MARIO M. MENDOZA, 447-46-9374  
JAMES W. PREISCH, 460-74-0348  
PAUL W. RECORD, 267-46-0581  
LEE J. SLATER, 545-80-3018  
DAVID J. ZANER, 184-38-7459

##### To be major

JOSEPH D. CAMACHO, 565-84-5872  
ROBERT A. CRAIG, 513-45-8002  
DAVID W. FALSEY, 346-50-7602  
DALE C. GULLICKSON, 262-66-8973  
BRUCE E. HALL, 040-38-4268  
RODNEY C. KNUDSON, 552-82-0571  
WILLIAM P. NAYLOR, 706-38-5392  
RONALD L. FLEIS, 507-44-0906

##### To be captain

LAWRENCE H. KENT, 556-86-7598  
RICHARD R. MILLER, 440-70-5893  
JAMES L. PAUKERT, 463-78-6236